Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Telecommunications Services Inside Wiring	)	
	)	CS Docket No. 95-184
	)	FCC 95-504
	)	
Customer Premises Equipment	)	

AMERITECH'S REPLY COMMENTS

Michael J. Karson
Counsel for Ameritech
Room 4H88
2000 West Ameritech Center Drive
Hoffman Estates, IL. 60196-1025
847-248-6082

Gary L. Phillips
Counsel for Ameritech
Room 1020
1401 H Street, N.W.
Washington, D.C. 20005
202-326-3817

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SUMMARY

Ameritech continues to believe that telephone and cable premises wire should be governed by a common set of rules, including a common demarcation point that ensures that wiring is readily accessible to alternative service providers. However, when harmonizing these different sets of rules, the Commission should not increase the amount of overall regulation. Subscribers and building owners should be able to exercise control over their premises wire. To the extent there is a signal leakage problem associated with that wire, then the signal leakage rules should apply to all providers. Otherwise, connection standards should be developed by the industry and should have industry-wide application. There is no access to private property problem for the Commission to solve. Finally, any action the Commission takes in this docket with respect to cable CPE must protect the integrity of the system and protect against theft of service.

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AMERITECH'S REPLY COMMENTS

Ameritech offers the following reply to the initial comments filed on the Notice of Proposed Rulemaking released in this docket on January 26, 1996 ("NPRM").[1] In the NPRM, the Commission solicits views on a variety of proposals to bring more parity between its telephone and cable television premises wire rules and policies.

Ameritech supports the Commission's initiative to adopt a common set of rules to govern telephone and cable premises wire. Given the converging nature of telephone and cable service and the facilities used to provide them, different rules based on type of wire or service are untenable. At the same time, however, and given the scope of this docket, it is apparent

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[1] Several parties incorporated their comments in Docket 92-260 by reference in the record here. Accordingly, Ameritech incorporates by reference Ameritech New Media's March 18, 1996 comments and April 17, 1996 reply comments from Docket 92-260, as well.

that the Commission must prioritize the matters to be addressed and then act on those highest priority items quickly to eliminate the regulatory barriers to competition in broadband services. In Ameritech's view, the matter of highest priority has to do with the fact that the current definition of the demarcation point for cable in MDUs substantially impedes competition today. Therefore, the Commission should immediately revise its rules to establish the demarcation point(s) for MDUs at the minimum point of entry where all service providers have ready access to the wiring for the purpose of connecting to individual subscribers in the building. Limited flexibility in the application of this general rule should be permitted based on architectural considerations, technical characteristics of the service, and subscriber or premises owner requirements. This would be the best way to balance the property management, safety and security concerns of building owners with Congressional intent that competitive choice be made available for all consumers and businesses, not just those in single-tenant structures.

I.

THE COMMISSION SHOULD ADOPT A COMMON SET OF RULES TO GOVERN TELEPHONE AND CABLE PREMISES WIRE.

Ameritech recommended in its initial comments that the Commission adopt a common set of premises wire rules that reflect the increasingly converging nature of telephone service and cable service in the telecommunications marketplace.[2] This would reduce customer confusion, promote competition among providers of various broadband and

[2] Ameritech at 5-6.

narrowband services, and increase customer choice with respect to those services.[3]

Some parties argue that the Commission should regulate wire differently based on how the wire is used. According to these parties, wire that carries broadband signals would be regulated one way and wire that carries narrowband signals would be regulated another way. Others argue that the type of wire should determine the applicable rules. According to these parties, there would be one set of rules for copper wire, another set of rules for fiber, and perhaps a third set of rules for coaxial. Those approaches ignore the convergence which is occurring in this industry, the driving force for the NPRM in this docket. Indeed, Ameritech today offers both broadband and narrowband services over copper wire and both types of services can be provided over fiber and coaxial cable. Different rules based on "type-of-wire" or "type-of-use" distinctions would not work today, and will not work in the future in a marketplace where traditional telephone and cable services are converging in an environment of multiple signal delivery vehicles.

Some claim that deregulation of cable wire before there are competitive alternatives for cable wire installation would violate the provision of the Cable Act of 1992 that requires the Commission to regulate "equipment used to receive basic cable service" until competition is present. Yet, cable wire is not "equipment" for purposes of the Cable Act of 1992; otherwise, there would not have been any need for the Congress to enact a separate section in

[3] Many others agreed. AT&T at 4-8; TIA at 6; MAP/CFA at 4-10; Circuit City at 15; GTE at 2.

that Act governing cable home wire. Moreover, there is a competitive market for the installation of cable home wiring. Independent contractors, for example electrical contractors, can buy everything they need from Radio Shack to install cable home wiring. Thus, the factual predicate for this legal argument is not accurate.

In sum, a common set of rules to govern telephone and cable premises wire would help remove the regulatory distinctions which serve to make competition more difficult. The Commission should eliminate these distinctions to carry out the its responsibilities under the Telecommunications Act of 1996 to promote marketplace solutions in lieu of regulation.

II.

THE COMMISSION SHOULD ADOPT A COMMON DEFINITION FOR THE DEMARCATION POINT FOR BOTH TELEPHONE AND CABLE PREMISES WIRE.

In its initial comments, Ameritech suggested that the Commission adopt a common definition for the demarcation point for both telephone and cable television premises wire.[4] For single tenant residences or buildings, Ameritech suggested that the demarcation point be at a location no more than 12 inches from the point of entry to the building (inside or outside the building), or the closest practical point to the point of entry, provided that the point is reasonably accessible to competing providers. Ameritech also offered

[4] Ameritech at 7-12.

some recommendations on how to define the demarcation point for multiple dwelling units ("MDUs"). However, the Company cautioned that the general rules for establishing a single or multiple demarcation points for single tenant residences and MDUs must be tempered based on the requirements of the subscriber or premises owner, as well as the architectural considerations of the building and technical characteristics of the service being provided.[5]

Many, but not all parties agreed.[6] For example, some incumbent cable operators support a demarcation point at the individual unit within a MDU, but then suggest that riser cable within a common area belongs to the building owner and, therefore, is beyond the Commission jurisdiction to regulate. Others, however, say that this riser cable within a common area belongs to the incumbent cable operator.[7] The Commission can resolve this confusion by establishing the demarcation point, in accordance with Ameritech's recommendation.

Finally, many incumbent cable operators claim that the Commission cannot lawfully change the location of the demarcation point for MDUs. However, there is no such prohibition in either the Cable Act of 1992 or the Telecommunications Act of 1996. Indeed, if moving the demarcation point to a location that is readily accessible to an alternative cable provider will

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[5] Attached to Ameritech's initial comments were several diagrams depicting various types of premises and the demarcation points the Company recommends as a variation to the general rule for the premises depicted.

[6] TIA at 2-4; Siecor at 5; California at 2-3; Pacific at 3, 6-7; Circuit City at 15; Direct TV at 7; Compaq at 37; Stellarvision at 2; KepTel; NJRAO; CEMA at 3; Tandy at 6-7.

[7] See NYC 92-260 comments at 4.

increase competition (and it would), then such a result is entirely consistent with the Telecommunications Act of 1996 and the Congressional preference in that Act for marketplace solutions to what in the past were regulatory problems. The Commission has the ancillary jurisdiction to move the demarcation point and the Commission should exercise that jurisdiction so as to increase competition.

III.

SUBSCRIBERS AND BUILDING OWNERS SHOULD BE ABLE TO CONTROL THEIR PREMISES WIRE.

Aside from the definition of the demarcation point, Ameritech made several other recommendations which would help ensure that premises wire would not constitute a barrier to increased competition among various service providers. For example, the Company recommended that subscribers and building owners should be able to control their premises wire, just as they do today with respect to their telephone inside wire.[8] More specifically, the Commission could create a rebuttable presumption that the customer already owns the premises wire, thereby requiring the cable operator to demonstrate otherwise based, for example, on property and accounting records, and the applicable state property law on fixtures.[9]

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[8] TIA at 5; ICTA at 10-11; Compaq at 39; Tandy at 7; WCA at 15-16; Pacific at 3; GTE at 10; NYNEX at 10.

[9] Ameritech at 13-14; AT&T at 10.

Many incumbent cable operators argue that any such rule would amount to unlawful confiscation of property. Yet, cable operators can continue to own any wiring to which they can prove an interest and they can continue to recover their investment with respect to any such wiring. What they should not be allowed to do, however, is to exercise anticompetitive control over that wire. Instead, customers should be able to enjoy the beneficial use of the cable wire just as they do today for telephone inside wire.

Several incumbent cable operators claim that if the Commission relocates the demarcation point for MDUs, the effect will be to make the building owner the "gatekeeper" for the provision of services over the inside wire. It may be true that with respect to MDUs, particularly those with loop-through wiring, that the building owner does exercise some degree of control over the wire located within the building. But, the issue for the Commission is not whether there will be a "gatekeeper" for an MDU building, but whether the cable operator or the building owner would the better "gatekeeper," particularly in the context of loop-through wiring. Ameritech believes that the building owner is the better candidate because the owner has the greater incentive to exercise control over the wire in a way that benefits residents. Stated differently, the cable operator has the incentive to exercise control over the wire in a way that benefits residents only if they continue to subscribe to the cable operator's service. Thus, if having a "gatekeeper" is a natural result

of MDU communal living,[10] then the building owner is better suited than the cable operator to serve in that capacity.

Some cable operators argue that they must continue to control the inside wire in an MDU because otherwise they will not be able to compete with the local exchange carrier for the provision of two-way, narrowband and broadband service to the building. That is not true. Cable operators already have access to telephone inside wire by reason of the current Commission rules which prohibit a carrier from interfering with the customer's beneficial use of that inside wire.[11] What is lacking at the present time is the reciprocal right to use the cable inside wire and that is the issue the Commission should address in this docket.

IV.

TO THE EXTENT SIGNAL LEAKAGE IS A PROBLEM, THE COMMISSION'S SIGNAL LEAKAGE RULES SHOULD APPLY TO ALL PROVIDERS.

Ameritech argued in its initial comments that if signal leakage is a potential problem associated with the provision of cable services because of cable's use of broadband facilities, and others will be providing analog services using the same type of broadband facilities and transmission spectrum which overlap aeronautical and/or public safety frequencies, then the Commission's

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[10] Even in the case of a MDU building, Ameritech believes that residents must have the right to subscribe to the service provider of their choice.

[11] Because coaxial cable generally is not suitable for carriage of telephony, Time Warner presumably will be seeking to utilize that telephone inside wire to carry AT&T traffic as part of the by-pass agreement those companies recently announced. AT&T in Access-Fee Pacts With Local Phone Firms, Wall St. J., April 12, 1996, at B4.

signal leakage rules should apply to those providers, as well.[12] There was no significant dispute over this issue.[13]

V.

THE COMMISSION SHOULD RELY ON THE INDUSTRY TO DEVELOP CONNECTION STANDARDS FOR INDUSTRY-WIDE APPLICATION.

Ameritech recommended in its initial comments that common technical standards for connection to cable and telephone networks should be developed in open industry fora and, to the extent possible, should be the result of industry consensus. Ameritech and others also said that it would not be a good idea for the Commission to regulate the quality of the connections to broadband services; instead, the Commission should give the marketplace a chance to work.[14]

A few parties claim that industry standard setting could stifle innovation. Yet, by definition, industry standards generally follow a technical innovation which then must be standardized. As long as the Commission relies on the marketplace to establish those standards, then innovation will flourish.

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[12] Ameritech at 14-15.

[13] OpTel at 16-18 (requirement depends on character of service); U S West at 10-11; AT&T at 18, MAP/CFA at 16-17; NYNEX at 18; NCTA at 33; Time Warner at 36; NJRAO; GTE at 14; NJBPU; KepTel; Pacific at 10; Liberty at 24.

[14] Ameritech at 16-17; NJBPU; KepTel; WCA at 24; NCTA at 35; Time Warner at 31-36; AT&T at 19; GTE at 15-16; Pacific at 11; NYNEX at 18; U S West at 10-11.

VI.

THE COMMISSION SHOULD DO ALL IT CAN TO HARMONIZE THE DUAL SETS OF REGULATION OF PREMISES WIRE, BUT SHOULD NOT INCREASE THE AMOUNT OF REGULATION IN THE PROCESS.

Ameritech argued in its initial comments that the Commission's rules on premises wire should be the same whether cable or telephone service has traditionally been provided over that wire. However, the Commission must be careful not to harmonize the current rules in a manner that increases the overall regulatory burden contrary to the public interest.[15]

Those parties filing contrary comments generally made one of two different arguments. Some said that different regulations are justified based on the nature of the wire or the services being provided over the wire. That argument is unpersuasive for the reasons stated earlier. Others say that the rules should be harmonized on the basis of the current cable rules; in other words, the current cable rules should be extended to telephone wire. However, the current cable rules give customers fewer options than currently is the case with the telephone inside wire rules and that is why the incumbent cable operators prefer the cable home wire rules. Ameritech believes that turning the clock back on the telephone inside wire rules would undermine all of the pro-competitive effects of telephone inside wire deregulation. Rather than turning that clock back, the Commission should move ahead and extend the pro-competitive telephone inside wire rules to cable home wire. That will promote competition and customer choice.

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[15] Ameritech at 17-18. MAP/CFA at 4-10; Circuit City at 13-15; NJRAO.

VII.

THERE IS NO ACCESS TO PRIVATE PROPERTY PROBLEM FOR THE COMMISSION TO SOLVE.

The best evidence that there is no cable access to private property problem for the Commission to solve is that fact that at the end of 1994, cable operators had a national penetration rate of 65.2% and had installed facilities which passed 96% of the television households in the nation. To the extent any access problem remains, Ameritech argued in its initial comments that the Telecommunications Act of 1996 provides a solution.[16] Many agreed.[17]

The only contrary argument was the claim by some that cable operators are denied access to MDU building by owners who expect payment for access. Ameritech believes that MDU building owners consider a wide variety of factors when evaluating prospective cable service providers, including price, selection and quality. Cable operators who compete on that basis will not have difficulty gaining access to MDU buildings.

VIII.

THE COMMISSION MUST ENSURE THAT ANY ACTION IT TAKES WITH RESPECT TO DEREGULATION OF CABLE CPE PROTECTS THE INTEGRITY OF THE SYSTEM AND PROTECTS AGAINST THEFT OF SERVICE.

Ameritech argued in its initial comments that the theft of cable service problem must be an integral part of any Commission deregulation initiative

[16] Ameritech at 18-20.

[17] ICTA at 36-48 (no problem for the Commission to solve); BOMA at 1-5, 25-26 (same); NJBPU.

for cable CPE. Until that problem is resolved, the many existing providers of descrambling equipment will continue to compete for the business of providing products, with proprietary specifications, that respond to theft of service security needs of cable operators. However, it should be noted that deregulation of equipment does not hinge on expansion of the Commission's Part 68 rules. Consumers today can avail themselves of cable converters sold by consumer electronics retailers. This retail availability has developed in response to marketplace demands, without regulatory intervention. Also, this commercial -- and unregulated -- availability has produced no record of harm to the networks of service providers, in large part because those commercially available devices must meet non-interference requirements applicable to unlicensed radio frequency devices, as set forth in the Commission's Part 15 rules. Furthermore, and as the Commission is aware, the cable and consumer electronics industries have cooperatively developed a draft Decoder Interface Standard (IS-105) in the context of the cable television Consumer Electronics Compatibility docket. This draft standard recognizes the distinction between potential harm caused by CPE which is the focus of Parts 15 and 68,[18] and signal security from service theft. These developments obviate the need for extension of the Commission's Part 68 rules to cable CPE. Almost all of the parties are in agreement on these points and the few that dissent offer no specific argument or other justifications for their position.

[18] See 47 CFR Section 15.1; 47 CFR Section 68.1.

IX.

CONCLUSION

Ameritech believes that competition and customer choice in the converging telephone/cable marketplace will best be promoted by adopting the recommendations Ameritech has made in its initial comments and in this reply. As the Commission prioritizes its tasks in this docket, it should first act to establish demarcation points in MDU buildings which are reasonably accessible to all service providers. Then it can harmonize its cable and telephone wire rules in the other ways that meet the requirements of customers and promote competition among providers of the various services which will be carried over inside wire.

Respectfully submitted,

Michael J. Karson
Counsel for Ameritech
Room 4H88
2000 West Ameritech Center Drive
Hoffman Estates, IL. 60196-1025
847-248-6082

Gary L. Phillips
Counsel for Ameritech
Room 1020
1401 H Street, N.W.
Washington, D.C. 20005
202-326-3817

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CERTIFICATE OF SERVICE

I, Edith Smith, do hereby certify that copies of the foregoing Ameritech's Reply Comments has been served on the parties listed below, by first class mail, postage prepaid, on this 17th day of April, 1996.

By: Edith Smith
Edith Smith

Aaron I. Fleischman, Arthur H. Harding
Howard S. Shapiro, Terri B. Natoli
Craig A. Gilley
Attorneys for TIME WARNER CABLE
TIME WARNER COMMUNICATIONS
Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, N.W., Suite 600
Washington, D.C. 20554

John P. McCann
President
UNITED DOMINION REALTY TRUST
10 South Sixth Street
Suite 203
Richmond, VA. 23219-3802

David L. Siegel
Vice President, Finance
HUNTINGTON MANAGEMENT CORP.
3400 Lakeside Drive
Suite 500
Miramar, FL. 33027

Douglas E. Canton
President
MANAGEMENT SERVICE CORP.
102 S. First Street
Suite 301
Charlottesville, VA. 22905

David Barker
Vice President
WEEKS CORPORATION
4497 Park Drive
Norcross, GA. 30093

Marian Lightner
JEFFERSON WEST APARTMENTS
810 Wildwood Drive
Highway 50 West
Jefferson City, MO. 65109

Richard M. Goldberg, CPM, CSM
Senior Vice President
CLINTON INTERNATIONAL GROUP, INC.
2121 Ponce de Leon Boulevard
Penthouse
Coral Gables, FL. 33134

Lawrence L. Weintraub
Executive Director
BUILDING OWNERS and MANAGERS
ASSOCIATION OF METROPOLITAN ST. LOUIS
11756 Borman Drive
Suite 150
St. Louis, MO. 63146

EDWARD J. MINSKOFF EQUITIES, INC.
1325 Avenues of the Americas
New York, NY. 10019

Leonard Frenkil, Jr.
WASHINGTON PLACE MANAGEMENT
701 Cathedral Street
Baltimore, MD. 21201

Louis C. Buschle
COURT STREET EAST, LTD.
119 East Court Street
Cincinnati, OH. 45202

Ernest B. Norman
President
NORMAN MANAGEMENT COMPANY
4450 General de Gaulle Drive
Suite 1105
New Orleans, LA. 70131

Barbara E. Soriano, RPA, Managing Partner
Eileen M. Lewis, Property Manager
PICOR
335 North Wilmot
Suite 505
Tucson, AZ. 85711-2636

Scott Brenneke, CPM
Legislative Chairman
ADVANCED ASSET MANAGEMENT, INC.
570 California Avenue
Reno, NV. 89509

Deana Wilson
Division Manager
GENE B. GLICK CO., INC.
8330 Woodfield Crossing Blvd.
Suite 200
Indianapolis, IN. 46240

David Garfinkle
President
D SQUARE
1111 Lincoln Road
Suite 800
Miami Beach, FL. 33139

L. A. Buddy Patrick
Executive Officer
ATLANTA APARTMENT ASSOCIATION
8601 Dunwoody Place
Suite 318
Atlanta, GA. 30350-2509

Maria E. Contreras
Property Manager
ONE BRICKELL SQUARE
801 Brickell Avenue
Miami, FL. 33131

Dennis S. Steele
Executive Vice President
MARA ENTERPRISES, INC.
5525 Hoover Road
Grove City, OH. 43123

Benjamin O. Ringel
BRACH, EICHLER, ROSENBERG, SILVER,
BERNSTEIN, HAMMER AND GLADSTONE
101 Eisenhower Parkway
Roseland, N.J. 07068-1067

Mrs. Jonnie Mae Warner
Assistant Vice President
GOODMAN SEGAR HOGAN HOFFLER
2400 Maitland Center Parkway
Suite 100
Maitland, FL. 32751

David T. Boyce
Assistant Vice President
GREENSVIEW APARTMENTS
9090-C Town & Country Boulevard
Ellicott City, MD. 21043-3036

Richard J. Dishnica
Chief Operating Officer
AMERICAN APARTMENT COMMUNITIES
615 Front Street
San Francisco, CA. 94111

Brenda Love
Senior Property Manager
PATRIOT AMERICAN
1777 N.E. Loop 410
Suite 70
San Antonio, TX. 78217-5235

C. David Dean
Executive Vice President
TRANSWESTERN PROPERTY COMPANY
6671 Southwest Freeway
Suite 200
Houston, TX. 77074-2285

John P. Martonick, President
HOME BUILDERS ASSOCIATION of MARYLAND
1502 Woodlawn Drive
Baltimore, MD. 21207

Jerry I. Speyer
TISHMAN SPEYER PROPERTIES, INC.
520 Madison Avenue
New York, NY. 10022

John T. Griffin
BANKERS TRUST COMPANY
P. O. Box 318
Church Street Station
New York, NY. 10008

Cloyce Banister-Metzler-Bane, Ph.D.
President
IPM REAL ESTATE SERVICES, INC.
P. O. Box 10625
Golden, CO. 80401

Regina A. Brown
INTERNATIONAL COUNCIL of SHOPPING CENTERS
1033 N. Fairfax Street
Suite 404
Alexandria, VA. 22314-1540

Thomas P. Hix, CPM
Senior Vice President
TOMLINSON BLACK MANAGEMENT, INC.
107 South Howard
Suite 600
Spokane, WA. 99204-0373

Brenda Love, CPM
Vice President
INSTITUTE of REAL ESTATE
MANAGEMENT-San Antonio Chapter 48
c/o San Antonio Board of Realtors
9110 IH 10 West
San Antonio, TX. 78230

Terry A. Lerman
President
FIRST CAPITAL CORPORATION
Suite 3A
1350 Old Freeport Road
Pittsburgh, PA. 15238

Anthony J. Janca
Assistant Vice President, Office Buildings
FIRST UNION MANAGEMENT, INC.
Beck Building
400 Travis Street
Suite 333
Shrevport, LA. 71101

O'CONOR REAL ESTATE MANAGEMENT
1107 Kenilworth Drive
Suite 100
Baltimore, MD. 21204

Mark W. Rowley
President
PACIFIC TOWER PROPERTIES
Denali Towers North Building
2550 Denali
Suite 615
Anchorage, AK. 99503

Mark O. Knott
President
PARTNERS MANAGEMENT COMPANY
The Jefferson Building
105 W. Chesapeake Avenue
Suite 307
Towson, MD. 21204

L. Earl Armiger
President
ORCHARD DEVELOPMENT CORPORATION
Sears House
3979 Old Columbia Pike
Ellicott City, MD. 21043

Jon C. Genrich, CPM
Property Manager
HAMPTON ENTERPRISES
1660 South 70th Street
Suite 203
Lincoln, NE. 68506

Philip A. Trussell
THE MASSACHUSETTS INSTITUTE of
TECHNOLOGY REAL ESTATE OFFICE
238 Main Street
Suite 200
Cambridge, MA. 02142

Paul L. White, CPM, CSR, RPA
President and CEO
THE ALLEN MORRIS COMPANY
12th Floor
1000 Brickell Avenue
Miami, FL. 33131-3014

Arturo L. Fernandez, RPA
President
BUILDING OWNERS AND MANAGERS ASSOCIATION OF GREATER MIAMI, INC.
One Biscayne Tower
2 S. Biscayne Blvd.
Suite 0204
Miami, FL. 33131

Kit-McPhail-Bowman
Property Manager
BROOKFIELD MANAGEMENT COLORADO
BROOKFIELD DEVELOPEMENT, INC.
370 Seventeenth Street
Suite 3800
Denver, CO. 80202

Henry Irwig
Vice President-Commercial Properties
BEACON PROPERTIES, L.P.
50 Rowes Wharf
Boston, MA. 02110

Arturo L. Fernandez, RPA
General Manager
CODINA REAL ESTATE MANAGEMENT, INC.
World Trade Center
80 SW 8th Street
Suite 2100
Miami, FL. 33130

T. Brooks Brademas
General Partner
CENTER MANAGEMENT CORPORATION
425 N. Michigan
Suite 500
South Bend, IN. 46634-4077

Terry S. Bienstock
Philip J. Kantor
Barry A. Pineles
Attorneys for
CHARTER COMMUNICATIONS, INC. and
COMCAST CABLE COMMUNICATIONS, Inc.
First Union Financial Center
200 S. Biscayne Blvd., Suite 3160
Miami, FL. 33131

Lou Ann Susan
Site Manager
COURTYARD PLACE
425 S. 25th Street
South Bend, IN. 46615

Robert P. Fazen
Vice President
COLLIERS ABR, INC.
40 East 52nd Street
New York, NY. 10022

Peter H. Feinberg
Michael S. Schooler
Peter C. Godwin
Attorneys for
COX COMMUNICATIONS, INC.
Dow, Lohnes & Albertson
1200 New Hampshire Ave., N.W., Suite 800
Washington, D.C. 20036

John Nemecek
President, Asset/Property Management
DUKE REALTY INVESTMENTS, INC.
8888 Keystone Crossing
Suite 1200
Indianapolis, IN. 46240-2182

Douglas L. Bartley
Managing Director
FAISON
401 East Jackson Street
Suite 2300
Tampa, FL. 33602

Ronald P. Burson, C.P.A., CPM
Vice President and Treasurer
GORSUCH MANAGEMENT
603 West Wheeling Street
Lancaster, OH. 43130-0190

Bert Locke, Jr., RPA
THE GALBIEATH COMPANY
390 North Orange Avenue
Suite 1875
Orlando, FL. 32801

Lee M. Holmes, President
GUAM CABLE TV
530 W. O'Brien Drive
Agana, Guam 96910-4996

C. Haydon Stanley
Director of Governmental Affairs
GEORGIA APARTMENT ASSOCIATION
8601 Dunwoody Place
Suite 318
Atlanta, GA. 30350-2509

S. Perry Given, Jr.
General Counsel
HARBERT PROPERTIES CORPORATION
One Riverchase Parkway, South
Birmingham, AL. 35244

Lee A. Gifford
HAYGOOD MANAGEMENT COMPANY
4661 Haygood Road
Suite 101
Virginia Beach, VA. 23455

Sharon A. Wall
General Director
JOHN HANCOCK MUTUAL LIFE
INSURANCE COMPANY
John Hancock Place
Post Office Box 111
Boston, MA. 02117

Earl W. Starr
Vice President
JOHN ALDEN LIFE INSURANCE COMPANY
P. O. Box 020270
Miami, FL. 33102-0270

Donald M. Legow
LEGOW MANAGEMENT COMPANY
P. O. Box 43
Livingston, N.J. 07039-0043

Kathleen S. Rorris, CPM
President
LOCKWOOD REALTY, INC.
17 West Lockwood
Webster Groves, MO. 63119

Mark E. Rogers, CPM, CCIM
Director, Asset Management
L & B MULTIFAMILY ADVISORS, INC.
8750 North Central Expressway
Suite 800
Dallas, TX. 75231-6437

Ken W. Edmundson
President, Chief Operating Officer
LEDIC MANAGEMENT GROUP
5855 Ridge Bend Road
Memphis, TN. 38120

Edward J. Barsocchi
Assistant Vice President
LOWE ENTERPRISES COLORADO, INC.
1515 Arapahoe Street
Tower III
Suite 850
Denver, CO. 80202

Blossom A. Peretz, Esq.
Ratepayer Advocate
STATE OF NEW JERSEY RATEPAYER
ADVOCATE'S OFFICE
31 Clinton Street
11th Floor
P. O. Box 46005
Newark, NJ. 07101

Anne Mialaret
Real Property Manager
NILES INVESTMENT CORPORATION
3567 East Sunrise Drive
Suite 225
Tucson, AZ. 85718

Tony M. Edwards
Vice President and General Counsel
NATIONAL ASSOCIATION of REAL ESTATE
INVESTMENT TRUSTS
1129 Twentieth Street, N.W.
Suite 305
Washington, D.C. 20036-3482

George Y. Sodowick
NORTH VILLAGE ASSOCIATION
911 Village Drive East
(at Cranbury Cross Road)
North Brunswick, NJ. 08902

Thomas J. Bisacquino
Executive Vice President
NATIONAL ASSOCIATION of INDUSTRIAL
and OFFICE PROPERTIES
Woodland Park
2201 Cooperative Way
Herndon, VA. 22071

R. J. McLaughlin, CPM
Manager
101 HUDSON LEASING ASSOCIATES
101 Hudson Street
36th Floor
Suite 3602
Jersey City, N.J. 07302-3908

Walter S. de la Cruz
Director, Cable Television Franchises
Gary S. Lutzker
Telecommunications Counsel
NEW YORK DEPT. of INFORMATION
TECHNOLOGY & TELECOMMUNICATION
11 Metrotech Center, Third Floor
Brooklyn, N.Y. 11201

Steven Spinola
REAL ESTATE BOARD of NEW YORK, INC.
12 East 41st Street
New York, NY. 10017-6284

C. Gabriel Cole
President
RTE GROUP, INC.
220-230 Commercial Street
Suite 2F
Boston, MA. 02109

Gary Talles
ROBBINS REALTY
1133 Greenwood Road
Pikesville, MD. 21208

Deborah C. Costlow
Alan G. Fishel
Attorneys for
R & B REALTY GROUP
Winston & Strawn
1400 L Street, N.W.
Washington, D.C. 20005

Loretta Murray
Owner
ROSE'S DOWN HOME CLEANING
5347 N. Farm Road 143
Springfield, MO. 65803

Lynn Sugg
Property Manager
EAKIN & SMITH, INC.
424 Church Street
Suite 1506
Nashville, TN. 37219

Charles L. Goldenberg
President & Chief Executive Officer
SYLVAN LAWRENCE COMPANY, INC.
100 William Street
New York, NY. 10038-4552

Michael J. Kenny
Corporate Counsel
SENTINEL REAL ESTATE CORPORATION
666 Fifth Avenue
New York, NY. 10108-2698